

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, Proposed, Category 1 and 2 candidate, and other special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

[60 FR 9969, Feb. 22, 1995, as amended at 61 FR 59835, Nov. 25, 1996]

## Group 4200—Grazing Administration; Alaska; Livestock

### PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK

#### Subpart 4200—Grazing Administration; Alaska; Livestock; General

##### Sec.

- 4200.0-2 Objectives.
- 4200.0-3 Authority.
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#### Subpart 4210—Conditions

- 4210.1 Grazing districts.
- 4210.2 Lands subject to lease.
- 4210.3 Qualifications of applicants.
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#### Subpart 4220—Procedures

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- 4220.3 Maximum number of stock.
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- 4220.9 Range improvements.

#### Subpart 4230—Disposition of Leased Lands

- 4230.1 Settlement, location, and acquisition.
- 4230.2 Mineral prospecting, location, and purchase.

#### Subpart 4240—Protests, Hearings, and Appeals

- 4240.1 Protests.
- 4240.2 Hearings.

AUTHORITY: Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)–315(r)), section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 43 FR 29062, July 5, 1978, unless otherwise noted.

#### Subpart 4200—Grazing Administration; Alaska; Livestock; General

##### § 4200.0-2 Objectives.

The beneficial utilization of the public lands in Alaska for the purpose of livestock grazing shall be conducted in

such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to their use for agriculture, to the protection, development, and utilization of their forests and to the protection, development, and utilization of such other resources as may be of greater benefit to the public.

**§ 4200.0-3 Authority.**

The Act of March 4, 1927, as amended (43 U.S.C. 316, 316a through 316o), authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 316f provides that a lease may be made for such term as the Secretary deems reasonable, but not to exceed 55 years, taking into consideration all factors that are relevant to the exercise of the grazing privileges.

**§ 4200.0-5 Definitions.**

As used in this subpart:

- (a) *Secretary* means Secretary of the Interior;
- (b) *Director* means Director, Bureau of Land Management;
- (c) *Authorized officer* or *manager* means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;
- (d) *The Act* means the Act of March 4, 1927, as amended (43 U.S.C. 316, 316a through 316o);
- (e) *Person* means individual, partnership, corporation, or association;
- (f) *Native* means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;
- (g) *District* means any grazing district established under the Act;
- (h) *Animal unit month* means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for 1 month. For the purpose of this definition, one cow shall be

considered the equivalent of one horse, or five sheep or five goats.

**Subpart 4210—Conditions**

**§ 4210.1 Grazing districts.**

(a) *Establishment.* Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be coextensive with the boundaries of the public land districts in Alaska.

(b) *Leases on acreage basis.* Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

**§ 4210.2 Lands subject to lease.**

Vacant, unreserved, and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 4200.0-3 public lands within the boundaries of a grazing district which have been withdrawn for any purpose may be leased with the prior consent of the Department or agency having administrative jurisdiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

**§ 4210.3 Qualifications of applicants.**

An applicant for a grazing lease is qualified if the applicant:

- (a) Is a citizen of the United States, or
- (b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or
- (c) Is a group, association, or corporation organized under the laws of the United States or of any State or

Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

**§ 4210.4 No right acquired by applicant prior to lease.**

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease, or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for the lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.<sup>1</sup>

**Subpart 4220—Procedures**

**§ 4220.1 Applicants.**

(a) *Classes of applicants and preference.* Applicants for grazing leases shall be given preference in the following order:

- (1) Natives.
- (2) Bona fide settlers.
- (3) Other qualified applicants.

(b) *Assertion of preference rights.* Any person claiming a preference right to a lease under paragraph (a) of this section must furnish with the application required under § 4220.2(a) a statement setting forth the facts on which such claim is made.

**§ 4220.2 Application for lease.**

(a) *Form used.* An application for grazing lease must be executed in duplicate on a form approved by the Director, and filed with the manager.

(b) *Schedule of operations.* The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which

will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

(c) *Financial responsibility.* The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

**§ 4220.3 Maximum number of stock.**

The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

**§ 4220.4 Annual rental.**

(a) *Amount.* Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

(b) *Adjustment or waiver.* The manager, if he determines such action to be in the public interest by reason of: (1) Depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective

<sup>1</sup> It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who willfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than \$500. (Sec. 12, Act of March 4, 1927; 43 U.S.C. 316k and notice approved March 7, 1929.)

lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of 60 days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

**§ 4220.5 Reduction in excessive leased area.**

Whenever, in the opinion of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

**§ 4220.6 Free grazing permits.**

Any person may file application in duplicate on a form approved by the Director, for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than 1 year.

**§ 4220.7 Leases.**

(a) *Issuance of lease.* If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on a form approved by

the Director, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that portion of the year subsequent to the lease issuance.

(b) *Report of grazing operations.* Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on a form approved by the Director, of his grazing operations during the preceding year.

(c) *Assignments.* No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on a form approved by the Director and must be accompanied by the application on a form approved by the Director, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

(d) *Renewals.* An application for renewal of a grazing lease should be executed and filed in duplicate on a form approved by the Director not less than 4 months but not more than 8 months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

(e) *Rights reserved.* Grazing leases under this part shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development, and utilization, under applicable laws and regulations, of the mineral, timber,

water, and other resources on or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(f) *Restrictions.* No lessee may so enclose roads, trails, or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing, or trapping on the land, or the ingress of miners, mineral prospectors, and other persons entitled to enter the area for lawful purposes.

(g) *Termination.* A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(h) *Cancellation.* A lease may be canceled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of this part. No lease will be canceled for default in complying with the provisions of the lease or of this part until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be canceled.

#### **§ 4220.8 Stock driveways; crossing permits; quarantine regulations.**

(a) *Stock driveways.* The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) *Crossing permits.* A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on a form approved by the Director, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

(c) *Quarantine regulations.* Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

#### **§ 4220.9 Range improvements.**

(a) *Permits for construction and maintenance.* Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on a form approved by the Director. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes. The lessee, upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on a form approved by the Director.

(b) *Removal of improvements and personal property.* (1) Improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(2) If all moneys due have been paid and the lessee, on or before the termination of his lease in whole or in part for any reason, notifies the manager of his determination to leave on the land involved in such termination improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, lease, or entry under any public land law, the land on which such improvements are located, until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(3) In the absence of a notice by the lessee in accordance with paragraph (b)(2) of this section, the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed with the time allowed shall thereupon become the property of the United States.

### **Subpart 4230—Disposition of Leased Lands**

#### **§ 4230.1 Settlement, location, and acquisition.**

Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be canceled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands (see § 4220.7(e)) and that the lands are suitable for and otherwise subject to the

intended settlement, location, entry, or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee, the grazing lease may be canceled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

#### **§ 4230.2 Mineral prospecting, location, and purchase.**

Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3800 of this chapter.

### **Subpart 4240—Protests, Hearings, and Appeals**

#### **§ 4240.1 Protests.**

Protests against an application for a lease should be filed in duplicate, with the manager, contain a complete disclosure of all facts upon which the protests is based, and describe the lands involved in such protest; and should be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should be accompanied by an application for a grazing lease.

#### **§ 4240.2 Hearings.**

Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings

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## § 4310.1

before an administrative law judge shall be governed by § 4.450 of this title.

### Group 4300—Grazing Administration; Alaska; Reindeer

NOTE: The information collection requirements contained in subpart 4320 of Group 4300 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0024. The information is being collected to permit the authorized officer to determine whether an application to utilize the public lands in Alaska for reindeer grazing should be granted. The information will be used to make this determination. The obligation to respond is required to obtain a benefit. [48 FR 40890, Sept. 12, 1983]

### PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER

#### Subpart 4300—Grazing Administration; Alaska; Reindeer; General

Sec.

4300.0-3 Authority.

4300.0-5 Definitions.

#### Subpart 4310—Conditions

4310.1 Lands subject to grazing permit.

4310.2 Qualifications of applicants.

4310.3 No rights acquired by applicant prior to issuance of grazing permit.

4310.4 Rights reserved; public land laws applicable.

4310.5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

#### Subpart 4320—Procedures

4320.1 Application for grazing permit.

4320.2 Filing fee; grazing fee.

4320.3 Term of grazing permit; renewals.

4320.4 Area of use and maximum number of reindeer.

4320.5 Adjustment of grazing permit area.

4320.6 Report of grazing operations; assignments allowed.

4320.7 Termination of grazing permit; cancellation.

4320.8 Crossing permits.

4320.9 Permits for construction and maintenance of improvements; removal.

#### Subpart 4330—Protests

4330.1 Protests.

#### Subpart 4340—Trespass

4340.1 Trespass.

AUTHORITY: Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 43 FR 29065, July 5, 1978, unless otherwise noted.

### Subpart 4300—Grazing Administration; Alaska; Reindeer; General

#### § 4300.0-3 Authority.

Section 12 of the Act of September 1, 1937 (50 Stat. 902), authorizes the Secretary of the Interior to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of this Act.

#### § 4300.0-5 Definitions.

(a) *Reindeer* includes reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds and the increase thereof.

(b) *Natives* include the native Indians; Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

(c) *Bureau* means Bureau of Land Management.

(d) *Director* means Director, Bureau of Land Management.

(e) *Authorized Officer* means the Bureau official who has been authorized to issue a reindeer grazing permit.

(f) *The Act* means the Act of September 1, 1937 (50 Stat. 902).

#### Subpart 4310—Conditions

##### § 4310.1 Lands subject to grazing permit.

Vacant and unreserved and unappropriated public lands are subject to inclusion in a reindeer grazing permit.